

REMARKS**Status**

Claims 1-24 were originally filed in the application; however, the application was subjected to a restriction requirement on January 23, 2009, and only claims 1-7 were elected for prosecution on the merits. The present amendment amends independent claim 1, the only pending independent claim in the application. As the amendment does not cancel any of the claims or add any additional claims, it is claims 1-7 as now amended which are at issue.

Statement of the Substance of Interview

A personal interview occurred on August 4, 2009, between Examiners Salmon and Newhouse, and Applicant's representative Thomas E. Anderson. No exhibits were provided. During the interview the denial of priority related to Provisional Application No. 60/422,282 was discussed. An agreement was reached in the course of the interview regarding the reversal of the denial of priority upon amending independent claim 1 to state "some of the foam of the product."

Entry of this statement of the substance of interview is requested as the statement is in compliance with 37 CFR 1.133.

The Rejection

In the Office Action dated March 13, 2009, the Examiner denied the claim for the benefit of Provisional Application No. 60/422,282, filed October 30, 2002. In addition, the Examiner rejected claims 1 and 7 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,204,760 to Whiteford in view of U.S. Patent Application Publication No. 2003/0152297 to Yasuhira, and claims 2-6 under 35 U.S.C. §103(a) as being unpatentable over Whiteford in view of Yasuhira and in further view of U.S. Patent No. 6,610,338 to Tang, U.S. Patent No. 4,177,310 to Steeves, and U.S. Patent No. 6,607,097 to Savage.

The Rejection of Claims 1-7 under 35 U.S.C. §103(a)

The Applicant would like to thank the Examiners for their time and cooperation during the personal interview of August 4, 2009, a summary of the substance of that interview being concurrently filed herewith.

Independent claim 1 has been carefully amended to clarify that it is some of the foam of the product which is trapped between the first closing seal and the second closing seal. Pursuant to the agreement reached during the above-mentioned interview, the current amendment to independent claim 1 regains the benefit of the prior filed Provisional Application No. 60/422,282. As such, the application, which entered the National Phase on April 29, 2005, based off a PCT Application filed October 30, 2003, now has an effective filing date of October 30, 2002 due to the benefit of priority of the Provisional Application.

The Yasuhira reference, which the Examiner uses in the rejection of claims 1-7, was filed in the United States on February 11, 2003, and claims priority to a Japanese reference (JP 2002035292) filed on February 13, 2002. However, the Japanese reference was not published until August 27, 2003. As such, the earliest reference date of the Japanese reference is its publication date of August 27, 2003, and the earliest reference date, under 35 U.S.C. §102(e), for the Yasuhira reference is its U.S. filing date of February 11, 2003. Therefore, as the present application has a filing date of October 30, 2002, which predates both the Yasuhira reference and the Japanese reference, the rejection of claim 1 can no longer stand and Applicant respectfully submits that claim 1 is in condition for allowance.

Further, as each of claims 2-7 depend on independent claim 1, either directly or indirectly, the rejection of these claims can no longer stand in view of the amendments to

independent claim 1. As such, Applicant respectfully submits that claims 2-7 are in condition for allowance.

Conclusion

In view of the amendments and remarks presented herein, Applicant respectfully submits that claims 1-14 are now in condition for allowance. Any questions, comments or suggestions the Examiner may have which would place the application in still a better condition for allowance should be directed to the undersigned attorney.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 07-1180.

Dated: August 13, 2009

Respectfully submitted,

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